SUPREME COURT, U. S.
JUL 16 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1973

Case No. 73-2030

DAVID S. HEDDEN,

Petitioner

vs.

THE STATE OF FLORIDA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

David A. Maney
Gordon and Maney, P.A.
2919 First Financial Tower
Tampa, Florida 33602

Counsel for Petitioner

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PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

TO THE SUPREME COURT OF THE UNITED STATES:

The Petitioner, David S. Hedden, respectfully prays that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of Florida, Second District, entered in this proceeding on the 19th day of December, 1973. References are to the appendix included as a part of this Petition.

OPINION BELOW

The opinion of the District Court of Appeal of Florida, Second District, appears at 287 So.2d 179 (A-1). The memorandum decision of the Florida Supreme Court denying Petitioner's Petition for Writ of Certiorari on April 18, 1974, appears at 294 So.2d 89 (A-1).

JURISDICTION

The judgment of the District Court of Appeal of Florida, Second District, was entered on December 19, 1973. A timely Petition for Writ of Certiorari was filed with the Florida Supreme Court and was denied on April 18, 1974. This Petition for Writ of Certiorari was filed within ninety (90) days of the denial of Petitioner's Petition for Writ of Certiorari by the Florida Supreme Court. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257 (3).

QUESTION PRESENTED

Whether physical evidence derived from statements made by Petitioner during police interrogation without *any Miranda* warnings shall be excluded at a subsequent criminal trial.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fifth Amendment:
"No person shall be ... compelled in any criminal case to be a witness against himself ..."
United States Constitution, Fourteenth Amendment:
"No state shall make or enforce any law which shall abridge the privileges or immunites of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law ..."

STATEMENT OF THE CASE

This Petition for Writ of Certiorari seeks review of the decision of the District Court of Appeal for the Second District, State of Florida, affirming the judgment entered on jury verdict finding Petitioner guilty of first degree murder.

Petitioner presented the District Court of Appeal of Florida, Second District, with, *inter alia*, the following points of law:

> THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE WHERE THE INFORMATION LEADING TO THE DISCOVERY OF THAT EVIDENCE WAS OBTAINED DURING THE COURSE OF DEFENDANT'S INTERROGATION AND SUBMISSION TO POLYGRAPH TESTS AT THE LEE COUNTY SHERIFF'S OFFICE AT A TIME WHEN DEFENDANT WAS THE NUMBER ONE SUSPECT IN THE CASE AND WHEN CONCEDELY DEFENDANT WAS NOT ADVISED OF HIS CONSTITUTIONAL RIGHTS TO REMAIN SILENT OR TO HAVE COUNSEL.

On December 19, 1973, the District Court of Appeal of Florida, Second District, affirmed Petitioner's conviction, PER CURIAM.

REASONS FOR GRANTING THE WRIT

Physical evidence derived as a result of violation of the prophylactic rules established in Miranda must not be used in a subsequent criminal trial.

On June 29, 1972, two fishermen found the body of Laisley Minor Crawford floating in the Caloosahatchee River. Mr. Crawford had been shot to death with a small caliber weapon. Examination of the projectiles found in his body indicated that they had been fired through a weapon equipped with a silencer.

Mr. Crawford was Petitioner's next-door neighbor. Officer Clingenpeel, the chief investigating officer, learned on July 3, 1972, that Petitioner told a druggist prior to the death of Mr. Crawford that a neighbor had killed his alligator, and that he was going to get him for it. Chief Investigator Clingenpeel also was advised that Petitioner had ruined one .22 caliber pistol making a silencer for it, but that Petitioner had another one. (A-2).

With the knowledge that Petitioner

1. Had threatened to kill his neighbor;
2. Had supposedly ruined one .22 caliber pistol making a silencer, but had another pistol;
3. Lived in the house adjacent to the residence of the decedent; and
4. Had, by previous admission, been near the scene of the crime at the time the murder was committed,

Chief Investigator Clingenpeel arrived at Petitioner's home on July 4, 1972, to "interview" Petitioner. Chief Investigator Clingenpeel admitted that prior to the "interview" Petitioner was at the top of his list of suspects. (A-5).

Petitioner and his wife were invited to accompany the officers to the Lee County Sheriff's Department for questioning. Petitioner was kept isolated in a small room for nearly an hour while his wife was interrogated by the police. Petitioner was then taken from the room where he had been kept into another room in the same building where he was interrogated by Chief Investigator Clingenpeel and two other police officers. (A-5).

During the course of the interrogation at the police station, the police learned that Petitioner owned certain weapons. At the conclusion of the polygraph examination, the police "requested" Petitioner to return with them to Petitioner's home for the purpose of surrendering the weapons. While waiting, the police asked Petitioner if he had any objection if they "looked

around" and Petitioner, who had still not been advised that he was a suspect, and who had not been given *Miranda* warnings, made no objection to the request.

While looking around, the police found a blood-stained blanket in the back of a van owned by Petitioner. The police took the blanket and the weapons from Petitioner.

At no time on July 4, 1972, prior to his interrogation, after his interrogation, and prior to the seizure of the evidence obtained as a result of that interrogation, was Petitioner advised that he was a suspect or was he given the warnings contemplated by this Court in *Miranda*.

The decedent's blood was type A, Rh negative. The deceased had been shot four times with a small caliber weapon which had been equipped with a silencer.

The blood on the blanket was established to have been type A, Rh negative. One of the weapons taken from Petitioner was a small caliber weapon which appeared to have been earlier equipped with a silencer.

Petitioner was indicted on August 16, 1972 and charged with the crime of first degree murder. On the same day, Petitioner filed appropriate motions to suppress evidence, asserting that the State's proposed use of certain evidence directly infringed upon Petitioner's right against compulsory self-incrimination. The trial court ultimately denied Petitioner's motion to suppress and rejected Petitioner's argument that use of the evidence abrogated Petitioner's right to due process of law. (A 6-8).

In denying Petitioner's motion to suppress evidence and in overruling Petitioner's objection to the introduction into evidence of the pistol and a blood-stained blanket, the trial

judge held that in order for the police to be under any obligation to give the warnings required by *Miranda*, the accused must have been first arrested; an in-custodial interrogation is not within the reach of *Miranda* if there is neither arrest nor physical restraint. Affirmance of the trial court's disposition by the District Court of Appeal is erroneous since the principle is in conflict with the principles established by this Court in both *Escobedo v. Illinois*, 378 US 478, 12 L.Ed. 2d 977, 84 S.Ct. 1758 (1964) and *Miranda v. Arizona*, 384 US 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602 (1966).

Escobedo held that the critical point in effecting protection of a citizen's constitutional rights occurs when "...the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular suspect. ..." 378 US at 492, 84 S.Ct. at 1765

The undisputed evidence before the trial court is susceptible to no conclusion other than that the police inquiry into an unsolved crime had changed from a general investigation and had focused on Petitioner at the time of his interrogation. Notwithstanding Petitioner's objection that the physical evidence thus seized had been obtained as a direct and proximate result of the rules established by this Court in *Miranda*, Petitioner's motion to suppress the evidence thus seized was denied and his objection to the introduction of the evidence at trial was overruled.

Petitioner contends that violation of the prophylactic rules established by *Miranda* requires exclusion of the physical evidence obtained as a result of a post-*Miranda* in-custodial interrogation. The question before this Court therefore relates to the judicial consequences of police disregard of procedural safeguards established by *Miranda* for protection of the Fifth Amendment right against self-incrimination.

The police conduct complained of here does not actually infringe upon Petitioneer's Fifth Amendment rights, but constitutes a departure from the standards established by this Court in *Miranda* to safeguard the privilege. The question not reached by this Court in *Michigan v. Tucker*, Case No. 73-482, Vol. 42, No. 48, page 4887, United States Law Week, is now before this Court: Is evidence derived from statements taken in violation of the *Miranda* rules to be excluded? Since *Silverthorne Lumber Company, Inc. v. United States*, 251 US 385, 40 S.Ct. 182, 64 L.Ed. 319 (1920), this Court has held that a state may not prove its case either through illegally obtained evidence or any derivative thereof. As stated by Mr. Justice Holmes in the Silverthorne case:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all. Of course, this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the government's own wrong cannot be used by it in the way proposed."

Ibid., 251 US at page 392, 40 S.Ct. at page 183.

The exclusionary rule was made applicable to the states in *Mapp v. Ohio*, 367 US 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081 (1961).

The exclusionary rule was further developed in *Wong Sun v. United States*, 371 US 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963). There, testimonial evidence had been elicited from the petitioner at the time of his illegal arrest which led the police to narcotics. It was held that the testimonial evidence was inadmissible and should have been excluded. The fruits of a Fourth Amendment violation were thus held inadmissible. This

Court further held that the narcotics which had been obtained as a result of Toy's unlawfully obtained statement should have been excluded as a fruit of the original arrest.

The weapon and the blood-stained blanket were obtained as fruits of the original unlawful interrogation, and, under this Court's prophylactic rules established in *Miranda*, should have been excluded.

In *United States v. Wade*, 388 US 218, 87 S.Ct. 1926, 18 L.Ed. 2d 1149 (1967) and *Gilbert v. California*, 388 US 263, 87 S.Ct. 1951, 18 L.Ed. 2d 1178 (1967), this Court held that an in-court identification by a witness who had viewed the defendant-petitioner in a lineup before trial in the absence of counsel violated the accused's Sixth Amendment right and should have been excluded from trial. This Court recognized that had the in-court identification not been based on a previous lineup, but had been independent, the in-court identification would have been proper. The case was remanded to give the prosecution an opportunity to demonstrate that the in-court identification was made independently of pre-trial lineup.

Gilbert becomes relevant because this Court went on to state that the testimony of witnesses at a trial that they had identified the defendant at a pre-trial lineup must be excluded since the lineup with respect to which they testified was illegal. In excluding that testimony, this Court noted:

> "That testimony is the direct result of the illegal lineup 'come at by exploitation of (the primary) illegality.' The state is therefore not entitled to an opportunity to show that that testimony had an independent source. Only a *per se* exclusionary rule as to such testimony can be an effective sanction to insure that law enforcement authorities will respect the accused's constitutional rights to the presence of his counsel at the critical lineup. ...(T)he desirability of deterring the constitutionally objectionable

practice must prevail over the undesirability of excluding relevant evidence. *cf. Map v. Ohio*, 367 US 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081. ..."

Ibid., 388 US at pages 272-273.

In *Harrison v. United States*, 392 US 219, 88 S.Ct. 2008, 20 L.Ed. 2d 1047 (1968), this Court stated:

"The petitioner testified at trial only after the government had illegally introduced into evidence three confessions all wrongfully obtained, and the same principle that prohibits the use of confessions so procured also prohibits the use of any testimony impelled thereby — the fruit of the poisonous tree, to invoke a time-worn methaphor."

Ibid., 392 US at page 222.

In *Tucker v. Michigan, supra*, this Court recognized that:

"The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in wilful, or at the very least, negligent conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instil in those particular investigating officers, or in their future counterparts, a greater degree of care toward the right of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force."

Ibid., 42 L.W. at page 4891. Continuing, the Court noted:

"Although we have been urged to resolve the broad question of whether evidence derived from statements taken in violation of the Miranda rules must be excluded regardless of when the interrogation took place, we instead place our holding on a narrower ground. For at the time respondent was questioned these police officers were

guided, quite rightly, by the principles established in *Escobedo, supra,* particularly focusing on the subject's opportunity to have retained counsel with him during the interrogation if he chose to do so. ..."

Ibid., 42 L.W. at page 4891.

The unresolved question in *Tucker v. Michigan, supra;* i.e., whether evidence derived as a result of a violation of the prophylactic rules established in *Miranda* may be used in a subsequent criminal trial is now before this Court. Petitioner contends that such evidence must be excluded.

CONCLUSION

The decision of the trial court, as sustained by the District Court of Appeal of Florida, Second District, violates the prophylactic rules established by this court in *Miranda*. Because of the importance to the administration of justice in determining the effect of admissibility of evidence seized in violation of the prophylactic standards established by this Court in *Miranda*, a writ of certiorari should issue to review the judgment and opinion of the District Court of Appeal of Florida, Second District.

Respectfully submitted,
GORDON & MANEY, P.A.

David A. Maney

2919 First Financial Tower
Tampa, Florida 33602

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished by U.S. Mail to Attorney General, State of Florida, 419 Stovall Professional Building, Tampa, Florida this 15 day of July, 1974.

David A. Maney
Attorney

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David S. HEDDEN, Appellant,

v.

STATE of Florida, Appellee.

No. 73-65

District Court of Appeal of Florida,
Second District.

Dec. 19, 1973.

Appeal from Court of Record, Lee County;
William Lamar Rose, Judge.

PER CURIAM.

Affirmed.

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David S. Hedden, Petitioner,

v.

STATE of Florida, Respondent.

No. 44888

Supreme Court of Florida.

April 8, 1974.

Certiorari denied. 287 So.2d 179.

Adkins, C.J., and ROBERTS, BOYD, McCAIN and DEKLE, JJ., concur.

CROSS-EXAMINATION OF OFFICER CLINGENPEEL

"Q: Prior to July 4th or on July 4th prior to going out to David Hedden's address isn't it true that you had spoken to someone who told you that David Hedden was very mad at Mr. Crawford for killing his alligation?

"A: Prior to July 4th?

"Q: Yes, sir.

"A: I can tell you exactly. Yes.

"Q: So then, sir, tell us the date you found that out?

"A: July 3rd.

"Q: Who told you that, sir?

"A: Richard Van Kennerly.

"Q: What did he tell you, sir?

"A: That he was working at Sims and Mr. Hedden came in to purchase some medicine for some possums and during the course of the conversation he mentioned his neighbor had killed his alligator and he was going to get him for it; that he had ruined a .22 making a silencer for it and that he had another one.

"Q: Did he tell you that Mr. Hedden had told him he was going to kill Mr. Crawford?

"A: He did not mention no name. He said a neighbor.

"Q: Did he tell you he was going to kill a neighbor?

"A: A neighbor.

"Q: He did tell you that?

"A: Kennerly?

"Q: Yes.

"A: That is what he --

"Q: That is what he told you on the 3rd, is that not correct, sir?

"A: Right.

"Q: And he also told you he had a gun. Kennerly told you that Crawford had a gun?

"A: Kennerly didn't --

"Q: Strike that. Did Kennerly tell you that Mr. Hedden had a gun?

"A: He told me Mr. Hedden said he had a gun.

"Q: And that was on the 3rd?

"A: Right.

"Q: Did he tell you he had a silencer on it?

"A: He said he ruined a gun making a silencer and he had made a silencer to kill him with it.

"Q: That is what he told you and that was on the 3rd?

"A: That is what he told Kennerly and he reported it to me.

"Q: Did you report that to anyone?

"A: Did I report it to anyone?

"Q: Yes, sir.

"A: Who would I report it to?

"Q: You were in charge, weren't you?

"A: Right.

"Q: What time did you find that out?

"A: 11:45 a.m.

"Q: When did you go out to see Mr. Hedden?

"A: 1:30 p.m. of the 4th.

"Q: You did not go out there on a social visit then, did you?

"A: No On this I went out on the 4th, yes, to interview him.

"Q: In other words, it was not a social visit?

"A: Not a social visit, business.

"Q: You had some idea then from what you heard that Mr. Hedden might have been involved with the killing of Mr. Crawford. Would that not be correct, a correct statement?

"A: I had an idea along with many others.

"Q: About Mr. Hedden?

"A: Yes.

"Q: But you would say he was at the top of your list at the time, wouldn't you?

"A: Could I check something? I think there might be a typographical error on the typing here on this date.

"Q: Would you answer my question?

"A: Okay, *yes.* (Emphasis supplied.)

* * *

EXAMINATION OF PETITIONER

When we got down there they split us up and left me lone for about an hour all by myself in a room and they took her over and questioned her. Then they came and got me and put me in this little tiny room and three of them were there shooting questions at me, you know.

"Q: What kind of questions, David?

"A: Did my wife run around, did she go with Mr. Crawford, did I own guns, what kind of guns, all kinds of questions like that.

"Q: At a fast pace?

"A: Yes, sir.

"Q: Embarrassing?

"A: That is embarrassing, yes. It made me very nervous. Here you are in this little room.

"Q: Did it put you under a lot of tension?

"A: Yes.

"Q: Continue the story, David.

"A: Well, then we finally, when they were through, the men drove us home because they had driven us down

and they drove us back home and we got there, you know, and they asked us if they could see my guns and, certainly, I said, I will have to go into the house, and okay, we went into the house and I got my two guns and Dottie, my wife, got hers.

EXAMINATION OF OFFICER THOMAS J. WALLACE

"Q: Were you present when Mr. Hedden was interviewed?

"A: Yes, sir.

"Q: Would you relate to the jury the contents of that conversation and interview?

"A: Yes, sir.

MR.GOLDBERG: Your Honor, I object to any interview between this officer and any other officers down at the Sheriff's Department which he has already indicated took place without a proper predicate being laid to the extent as to what reason Mr. Hedden was called down there and to the extent they have laid the predicate he was investigating a case; they had called Mr. Hedden down there and that they had advised him of his rights under the law.

MR. D'ALLESANDRO: If it please the Court, an individual is advised of his rights when in the mind of the investigating law enforcement officer we have gone from investigation to interrogation, and that means the person has become a suspect.

THE COURT: Let me ask a question. Was the man in custody at that time or did he just drop in?

THE WITNESS: He was transported to the office by Investigators Clingenpeel and Copithorne, but he was not in custody, Your Honor.

MR.GOLDBERG: I object to this man saying that he was or was not in custody. If this man was not transported to the department by these two officers this man wasn't with him by his own testimony. He is not in position to testify what kind of custody he was in and he is also not in position to testify as to whether or not he was brought in for any specific purpose because he has already testified that this is what he thinks.

THE COURT: Miranda applies to in-custody interrogation and if he was not in custody he does not have to give him his rights.

MR. GOLDBERG: This witness can not establish he was not in custody. The only thing he can establish is that he was brought to the station --

THE COURT: I do not know what the witness can establish. Let's go a little further and find out what he can establish. He said he was present when he was brought in.

MR. GOLDBERG: But he said that the man was brought in by the officers in their car.

THE COURT: He said he was brought there. Ask him was he present when they were brought there?

MR. GOLDBERG: When they were picked up.

THE COURT: I did not use the word picked up. That has not occurred in the testimony yet. Let's don't create something that is not in the testimony. Cover that point, Mr. D'Allesandro.

BY MR. D'ALLESANDRO: (Cont'g)

"Q: Were you present when Mr. Hedden arrived at the CID Station?

"A: Yes, sir.

"Q: Was he in custody to your knowledge?

"A: No, sir.

"Q: Was he handcuffed?

"A: No, sir.

MR. GOLDBERG: Your Honor, I object. That is asking for a conclusion from a witness who does not know that this man was in custody.

MR.D'ALLESANDRO: Your Honor, he has indicated that he was working with these officers. He observed no handcuffs. That calls for no conclusion. That is a direct observation. He knew the man was not in custody. He is working with these officers.

THE COURT: Let's go a little further. After this interrogation was he let go; did he go home?

THE WITNESS: Yes, sir, he was transported home.

THE COURT: Carried back home?

THE WITNESS: Yes, sir.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-2030

DAVIS S. HEDDEN,

Petitioner

vs.

THE STATE OF FLORIDA,

Respondent

RESPONSE TO
PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT

TO THE SUPREME COURT OF THE UNITED STATES:

The Petitioner has prayed that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of Florida, Second District, entered in this proceeding on the 19th day of December, 1973. Hereafter follows the Respondent's statement in opposition thereto.

OPINIONS BELOW

Respondent takes note of the opinions appearing in the Petitioner's Appendix.

JURISDICTION

The Respondent admits those factual allegations relating to the entry of the judgment of the District Court of Appeal of Florida, Second District, on Decemb er 19, 1973. Further, Respondent agrees that the Petition for Writ of Certiorari was filed within ninety days of that date, as required by 28 U.S.C.A. §2101(c). Finally, the Respondent notes that the Petitioner attempts to invoke jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether physical evidence derived from statements made by Petitioner during police interrogation without any Miranda warnings shall be excluded at a subsequent criminal trial

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as set forth.

REASONS FOR NOT GRANTING THE WRIT

In the course of their investigation of the murder of Laisley Minor Crawford, officers of the Lee County Sheriff's Department finally reached the Hedden household. A They had been interviewing Mr. Crawford's neighbors. They had seen some of them at home, others they had taken to the jail or CID office. A-5. This routine call led to the discovery of evidence which contributed to Hedden's conviction.

Officer Clingenpeel and his associate, Officer Copithorne, went to the Hedden home and explained what they were doing and invited the Heddens to come down to the CID office. They agreed. During the course of the interview Clingenpeel inquired as to whether Hedden owned any guns. He replied that he did and invited the police to check them. A-9. Clingenpeel replied that they would like to and both Mr. and Mrs. Hedden signed consent to search forms. A

When they took the Heddens home they brought the guns to the officers. A-11. Mrs. Hedden got hers out of the kitchen drawer, and Mr. Hedden brought the rifle and ruger out of the bedroom. A-11. They then proceeded to walk around. In the course of the walk they came upon a van. Clingenpeel asked if they could search that and Mr. Hedden said go ahead. A-12. They found a blanket in the van with what looked like blood on it. When Clingenpeel called this to Mr. Hedden's attention, he said that he had carried an injured dog on it. On completing the visit,

the officers took the guns and the blanket and left the Heddens at their home and returned to their office. A-13.

While the Petitioner would have this court believe that the investigation had focused on the Petitioner and that they had taken him into custody as a suspect, the record affirmatively shows facts from which the trial court could conclude that this simply was not the case. Officer Clingenpeel even testified that Hedden had not become a suspect in his mind until a day or two after he had sent the gun to Miami for a ballistics check. A-13. A-15.

Deputy Wallace, one of the officers involved in the investigation of Crawford's death, testified that Hedden was not in custody when he was taken to be interviewed. A-1. He was not in handcuffs and after the interview he was taken home. A-3. He further testified that he was not a suspect at the time he signed the consent to search and agreed to surrender his guns for ballistics tests. A -4.

On this issue Clingenpeel testified that the Heddens were not forced or pressured in any way to come down to the office. A-7. They were not even reluctant to go. A-7. Even the Petitioner's reference to the cross-examination of Officer Clingenpeel on this matter is of little value. The state submits that a reasonable interpretation of Clingenpeel's response, "Okay, yes." At Petitioner's Appendix 5 is yes, I will answer the question, rather than yes, he was at the top of the list. This certainly does not conclusively establish that Hedden was a suspect in custody due a "Miranda warning."

While the question urged by the Petitioner is important and worthy of review in this court, the facts of this case simply do not present it. Rather, they present the question:

Was there substantial competent evidence in the record to support the trial judge's determination that Hedden was not a suspect or in custody and thereby entitled to a Miranda warning?

The state further submits that this question does not deserve review in this court.

WHEREFORE, the state respectfully prays this honorable court to make and enter its order denying Hedden's Petition for Writ of Certiorari.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL

CHARLES CORCES, JR.
Assistant Attorney General
419 Stovall's Professional Bldg.
305 North Morgan Street
Tampa, Florida 33602

Of Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the District Court of Appeal of Florida, Second District, was mailed to Goron & Maney, P.A., 2919 First Financial Tower, Tampa, Florida 33602, attorneys for Petitioner, on this the day of October, 1974.

Of Counsel for Respondent

DIRECT EXAMINATION OF OFFICER WALLACE

"Q: To your knowledge at that point in time was Mr. Hedden a suspect?

"A: No, sir.

"Q: For what purpose was he at the station?

MR. GOLDSTEIN: Objection unless he can establish that he does know.

"A: Do you know for what purpose he was at the station?

"A: I was advised it was --

MR. GOLDSTEIN: I object. It is hearsay.

THE COURT: He said he was there, didn't he?

"A: Yes, sir.

THE COURT: And he was there and heard it.

Overruled. Let's proceed.

"Q: Were you present when Mr. Hedden was interviewed?

"A: Yes, sir.

"Q: Would you relate to the jury the contents of that conversation and interview?

"A: Yes, sir.

MR. GOLDBERG: Your Honor, I object to any interview between this officer and any other officers down at the Sheriff's Department which he has already indicated took place without a proper predicate being laid to the extent as to what reason Mr. Hedden was called down there and to the extent they have laid the predicate he was investigating a case; they had called Mr. Hedden down there and that they had advised him of his rights under the law.

MR. D'ALLESSANDRO: If it please the Court, an individual is advised of his rights when in the mind of the investigating law enforcement officer we have gone from investigation to interrogation, and that means the person has become a suspect.

THE COURT: Let me ask a question. Was the man in custody at that time or did he just drop in?

THE WITNESS: He was transported to the office by Investigators Clingenpeel and Copithrone, but he was not in custody, Your Honor.

MR. GOLDBERG: I object to this man saying that he was or was not in custody. If this man was not transported to the department by these two officers this man wasn't with him by his own testimony. He is not in position to testify what kind of custody he was in and he is also not in position to testify as to whether or not he was brought in for any specific purpose because he has already testified that this is what he thinks.

THE COURT: Miranda applies to in-custody interrogation and if he was not in custody he does not have to give him his rights.

MR. GOLDBERG: This witness can not establish he was not in custody. The only thing he can establish is that he was brought into the station --

THE COURT: I do not know what the witness can establish. Let's go a little further and find out what he can establish. He said he was present when he was brought in.

MR. GOLDBERG: But he said that the man was brought in by the officers in their car.

THE COURT: He said he was brought there. Ask him was he present when they were brought there?

MR. GOLDBERG: When they were picked up.

THE COURT: I did not use the word picked up. That has not occurred in the testimony yet. Let's don't create something that is not in the testimony. Cover that point, Mr. D'Allessandro.

"Q: Were you present when Mr. Hedden arrived at the CID Station?

"A: Yes, sir.

"Q: Was he in custody to your knowledge?

"A: No, sir.

"Q: Was he handcuffed?

"A: No, sir.

MR. GOLDBERG: Your Honor, I object. That is asking for a conclusion from a witness who does not know that this man was in custody.

MR. D'ALLESSANDRO: Your Honor, he has indicated that he was working with these officers. He observed no handcuffs. That calls for no conclusion. That is a direct observation. He knew the man was not in custody. He is working with these officers.

THE COURT: Let's go a little further. After this interrogation was he let go; did he go home?

THE WITNESS: Yes, sir, he was transported home.

THE COURT: Carried back home?

THE WITNESS: Yes, sir.

THE COURT: No warrant or anything was made for his arrest at that time?

THE WINTESS: No, sir.

DIRECT EXAMINATION OF OFFICER CLINGENPEEL

'Q: Mr. Clingenpeel, I want to direct your attention to July 4th. Did you have occasion to see the defendant, David Hedden, and his wife, on that date?

'A: Yes.

'Q" Now, would you tell the Court where?

"A: At their home and at my office and back at their home.

"Q: What time at their home, approximately?

"A: It was in the early afternoon.

"Q: How did it happen that you were at their home?

"A: Went out to contact the people, interview them, the same as I had been doing with everybody on the street.

"Q: What people?

"A: The Heddens.

"Q: Did you go out there specifically to see them?

"A: Yes.

"Q: Had you previous to that occasion talked to other neighbors in the area?

"A: Yes.

"Q: Who had you previously spoken to?

"A: Mr. Koenig who lived next door, the Taylors and the Robinsons, the Hensens, and right down --

"Q: Had you talked to any of them at their house versus at the jail or at the CID Station?

"A: I talked to Mr. Koenig at his house, Mrs. Taylor at her house, the Kersey brothers at my office.

"A: The Kersey brothers you talked to down at the jail or at your office at CID?

"Q: Right.

"Q" Now, when you went to the Hedden's house on July 4th did you go alone?

"A: No.

"Q: Who was with you?

"A: Copithorne.

"Q: At that time I am sure you were aware that the body of Mr. Crawford had been recovered?

"A: Yes.

"Q: You were aware that a crime had been committed?

"A: Right.

"Q: Were the Heddens when you went to their home on the 4th of July suspects?

"A: No.

"Q: Had you any knowledge or any facts or anything that would lead you to suspect in any way that they were connected with this offense?

"A: No.

"Q: Would you tell the court what occurred when you went to the Hedden home on the 4th?

"A: When we first went out?

"Q: Yes, sir.

"A: We went out and after I had been trying to contact everybody in the whole neighborhood, somebody that knew something, we asked them if they would come down. We talked to them in regard to any information that might help to solve this crime and they agreed to come down to the CID office.

"Q: Any force or pressure put on them to come down to the office?

"A: No.

"Q: Any threats made?

"A: No.

"Q: Any reluctance on their part?

"A: No.

"Q: Did they then go down to the station?

"A: Yes.

"Q: Did they give you a statement?

"A: We just had an oral interview.

"Q: Did you at the time you went to see Mr. Hedden's home on the 4th of July have any personal knowledge that he had guns in his home?

"A: I took him back to the house and I knew at this time he had guns.

"A: You knew after you left the station?

"A: Yes.

"Q: But I mean when you first went to his home?

"A: No.

"Q: When you got to the station or had any conversation how did you learn that he had guns at his home?

"A: In the interview I asked him if he owned any guns. I asked him about guns and he advised me he owned a rifle and a pistol.

"A: And then did you inquire further about that?

"A: Yes.

"Q: What did you ask him?

"A: What type, and he told me he had a 22 rifle and a 22 Ruger and a 25 automatic he had purchased for his wife.

"Q: Did you ask if you could see those items?

"A: Yes.

"Q: What was his reply?

"A: Not so much we asked; he just volunteered that I could check them if we wanted to and I said I would appreciate it, we would like to.

"Q: Did Mr. Hedden know that you were question-

ing him or securing information about Mr. Crawford's death?

"A: Yes.

"Q: Did Mr. Hedden sign any consent to search form that date?

"A: Yes, he did.

"Q: Where?

"A: At the office.

"Q: Do you have that form with you?

"A: Yes. Do you wish to see it?

"Q: Yes, sir. Did Mrs. Hedden sign one?

"A: Yes, she did.

"Q: That same day?

"A: That same day.

"Q: Would you read Mr. Hedden's form for the Court and Mrs. Hedden's?

"A: Under the heading of Lee County Sheriff's Department, Investigation Division, date: 7-4-72: "To Whom it May Concern: I, David S. Hedden, of Elmwood Road, Alva, Florida, being over the age of twenty-one years and being of sound mind, do hereby give my consent and permission, knowing it is not mandatory, to Lee County Deputy Sheriffs Chuck Clingenpeel, Bill Copithorne, to search the following property: My residence, 551 Elmwood, which I own

or have under my control for the purpose of attempting to locate fireamrs, silencers, ammo. I will now sign this waiver in front of witnesses of my own free will. Signed: David S. Hedden. Witnessed: Chuck Clingenpeel, William E. Copithorne.

"Q: Now, at the top it says 'I, David S. Hedden.' That is in writing. Who wrote that name in?

"A: I did.

"Q: And Elmwood Road is in writing?

"A: I wrote that.

"Q: And then the names Chuck Clingenpeel and Bill Copithorne and 'My residence, 551 Elmwood, and firearms, silencers, ammo,' that is all in handwriting?

"A: Mine.

"Q: Was that filled in prior to Mr. Hedden signing it?

"A: Yes.

"Q: Did he read it?

"A: Yes.

"Q: Now, I believe you have one by Mrs. Hedden. Is that the same day?

"A: Yes, the same day. It must be in one of my other files.

"Q: While you are looking for it I will continue to ask you a few questions.

When you went back out to the house with Mr. a Mrs. Hedden did you have to look for the guns or did they give them to you?

"A: No, they give them to us.

"Q: With any reluctance?

"A: No.

"Q: Do you know where they went to get them?

"A: Mrs. Hedden got hers from the kitchen drawer. Mr. Hedden brought the rifle and ruger out of the bedroom.

"Q: Did you make any view or search of the premise at all other than inside the house?

"A: No more than just walking around. We did not search any at all.

"Q: Were they aware that you were doing so?

"A: Yes.

"Q: Was there any reluctance on their part?

"A: No, sir.

"Q: I believe you also, when you left, took a blanket with you?

"A: Yes, sir.

"Q: Would you tell the Court how it came to be that you received that blanket?

"A: There was a van sitting there and we walked by the van and I think we asked permission

could we search through the van too or look through it and if he would say no we would stop and he said go ahead and search.

"Q: Mr. Hedden said go ahead?

"A: Yes.

"Q: You looked in the van?

"A: Right, and there was a blanket.

"Q: And you took the blanket out?

"A: Right.

"Q: Did Mrs. Hedden make any comments about the blanket?

"A: Not that I recall.

"Q: Do you recall any comments along the line where she might possibly have said, well, it is an old one, you can have it, or don't give it back, or something of that nature?

"A: She may have, but I don't recall.

"Q: Did you bring to anyone's attention that you saw something on the blanket which you thought to be blood?

"A: Yes.

"Q: Whose attention did you bring that to?

"A: Mr. Hedden's.

"Q: What did he say?

"A: He said he had prior to this time picked up a dog along the road that had been in-

jured or struck by a vehicle and placed it in the van.

"Q: Do you recall any comment about it might possibly be possum blood?

"A: No. It is supposed to be a dog that had been injured.

"Q: Go ahead with Mrs. Hedden's.

"A: It was on the 4th of July. David Hedden signed that on the 6th of July. Mrs. Hedden signed one.

"Q: Would you speak slower because the jury has to understand you.

"A: On the consent to search on July 4th, it was signed only by David Hedden. Mrs. Hedden signed one on July 6th.

"Q: The way I understand you went down there, they came with you to the station, you talked, you went back, they gave you the weapons and the blanket and you came back to the jail?

"A: Right.

"Q: Did they remain at home?

"A: Yes.

"Q: Now, you are under oath sir. When you returned to the jail was David Hedden a suspect at that point in time?

"A: No, I couldn't say he was a suspect.

"Q: When did he become a suspect in your mind?

"A: He became a suspect when the lab reported that the cartridge found at the scene was definitely fired by the pistol that I had submitted for examination.

"Q: Now, the cartridge, I believe you previously testified, you received from Buddy Parker -- no, excuse me. That is a different one. You picked up a cartridge at the scene on the night in question?

"A: Right.

"Q: You received the gun on July 4th. Do you recall when you took the gun and that cartridge to Miami?

"A: I believe it would have been the 5th.

"Q: Do you recall when you received word from Miami as to the results of that examination?

"A: To the best of my knowledge I believe I received a telephone call within the next day or two and then I received a written report later.

"Q: But when you received the phone call that is when he became a suspect?

"A: Right.

"Q: Is that why on the 6th when you went out you got a search warrant to search his property?

"A: That is correct.